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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.706 OF 1988

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| The State of Maharashtra | ) ... | Appellant (Orig. Complainant) |
| Versus | | |
| 1. Joma Goma Phadake | ) | |
| 2. Baban Gotiram Patil | ) | |
| 3. Kundalik Dharma Patil | ) | |
| 4. Hasha Narayan Phadake | ) | |
| 5. Pandurang Dharma Patil | ) | |
| 6. Ram @ Ramchandra Gotiram Patil) | | |
| 7. Narayan Goma Phadake | ) | |
| 8. Gana Goma Phadake | ) | |
| 9. Shalik Gunaji Popeta | ) | |
| 10. Vishnu Shalik Popeta | ) | |
| 11. Jagan Dharma Patil | ) | |
| 12. Bama Balu Patil | ) | |
| 13. Janardan Gana Phadake | ) | |
| 14. Shankar Joma Phadake | ) | |
| all r/o. Village Chipale, Panvel, Taluka, Dist.Raigad.) ... | | Respondents (Orig. Accused.) |

Dr. F.R. Shaikh, Addl. P.P. for the appellant-State.

Smt. Deepa Sawant for the respondents-accused.

**CORAM: SMT. RANJANA DESAI &**
**A.S. OKA, JJ.**

**DATED: 17TH SEPTEMBER, 2004.**

**ORAL JUDGMENT :-** (Per Smt. Ranjana Desai, J.)

1. The respondents (for convenience, original accused 1 to 14 respectively) were tried in the court of Additional Sessions Judge, Raigad at Alibag in Sessions Case No.121 of 1983 for the offences punishable under sections 147, 148, 307 read with section 149 of the Indian Penal Code (for short, "the IPC") and also under section 307 read with sections 34 and 326, 354 read with section 149 of

the IPC and under section 427 read with section 149 of the IPC and under section 25(1) and section 26 of the Indian Arms Act. By judgment and order dated 29/4/1988, the learned judge acquitted all the accused. Hence, the State of Maharashtra has preferred the present appeal.

2. At the trial, the case of the prosecution was as follows. The incident in question had taken place on 27/3/1983 at about 6.30 a.m. in Village Chipale, Taluka Panvel. The complaint is filed by PW-1 Mangal Namu Patil. It appears that there are two groups in the village, one led by Rama Khandu and the other led by Joma Goma and the incident in question took place because it was alleged that, accused 3 Kundalik outraged the modesty of Anandibai wife of PW-7 Dehu Patil when she was proceeding to the town with a basket of vegetables early in the morning. When Anandibai returned to the village she reported about this incident. Thereafter when the explanation was sought from accused 1, who is supposed to be the leader of the group of the accused, by the complainant, PW-7 Dehu Patil and others by going to his house, he refused to admit anything. Thereupon, they told accused 1 that they were going to the police station to lodge a complaint. They came to the courtyard of the temple. Accused 1 went inside the house and came with a gun. He fired his gun. PW-2 Rama Khandu Patil received injury and he fell down. Accused 3 Kundalik also assaulted Rama Khandu Patil on his foot with an axe. Accused 3, 4, 5, 7, 8, 9, 11 to 13 and 14 used sticks and

other weapons to beat the complainant and other witnesses. Accused 3 Kundalik gave an axe blow on the foot of PW-8 Malubai Patil due to which she sustained serious injuries and she fell unconscious. After the complaint (Ex-31) came to be lodged by PW-1 Mangal Patil, an offence came to be registered by P.I. Chowdhari at C.R. No.25 of 1983. The investigation started. The accused came to be arrested. After completion of the investigation, the accused came to be charged as aforesaid.

3. In support of its case, the prosecution examined as many as 14 witnesses, out of which five witnesses are injured witnesses.

4. The accused denied the prosecution case. Their case was that there was acute rivalry between the two groups as a result of which false prosecution has been launched against them. They denied the incident of outraging the modesty of Anandibai. According to them, the entire incident has been concocted to falsely rope in the accused. The accused denied that they had used any weapons like guns, axes or sticks. It was further contended by the accused that there was already a case pending against the prosecution witnesses filed by the accused in which they have been convicted for the offences charged and sentenced to various punishments upto five years or so and, therefore, the accused are falsely implicated by them. The evidence led by the

prosecution did not find favour with the trial judge and, hence, he acquitted all the accused.

5. We have heard Mr. Shaikh, the learned Addl.P.P. appearing for the appellant-State and Ms. Sawant, the learned counsel appearing for the accused. With the assistance of the learned counsel, we have gone through the evidence and other record.

6. In support of the appeal, Mr. Shaikh vehemently contended that the trial judge has erred in acquitting the accused. The trial judge has ignored the cogent and consistent evidence of injured eye witnesses, the injuries of the prosecution witnesses and the doctor's evidence. The learned Addl. P.P. further contended that the motive has also been established by the prosecution. There was no reason for the injured witnesses to falsely implicate the accused. He, therefore, urged that this court should set aside the order of acquittal.

7. Ms. Sawant, the learned counsel appearing for the accused, on the other hand, contended that the view taken by the trial judge is a reasonably possible view and this court should not upset the judgment of the trial court in an appeal against acquittal. She submitted that it is true that the prosecution has led evidence of injured witnesses but considering the admitted enmity between the two groups, chances of false involvement of the accused

cannot be ruled out. The learned counsel submitted that the evidence of the prosecution witnesses is full of contradictions. She submitted that barring one prosecution witness i.e. PW-4 Tukaram Patil, none of the other prosecution witnesses have received any gun injuries. Therefore, the case put up by the prosecution is obviously not true. The genesis of the prosecution case is suppressed and, therefore, the acquittal order should not be disturbed.

8. We have given our anxious consideration to the submissions advanced by both the counsel. According to the prosecution, four prosecution witnesses have suffered gun injuries. It is the case of the prosecution that PW-2 Rama Khandu has received gun injury at the hands of accused 1. PW-3 Sopan received gun injury at the hands of accused 2. PW-4 Tukaram Patil suffered injury at the hands of accused 2. PW-5 Ashok suffered injury at the hands of accused 2. It is necessary to see how far the prosecution story is true.

9. While appreciating the prosecution evidence, it is important to bear in mind that the relations between the two groups are strained. Previously there was a case filed by the accused against the prosecution witnesses in which they were sentenced.

10. It is true that PW-4 Tukaram, PW-5 Ashok and PW-7 Dehu state that accused 2 fired at prosecution witnesses.

But, PW-1 Mangal who is the complainant does not refer to firing by accused 2 at all. PW-2 Rama says that accused 1 fired at him but does not say that accused 2 fired at anybody. PW-4 Tukaram does not say that accused 1 fired at anyone. But, since the prosecution witnesses are injured witnesses it is necessary to see whether there is any corroboration to their evidence to rule out false implication on account of admitted enmity.

11. PW-12 Dr. Shivaji Barfe had examined the prosecution witnesses on 27/3/1983. So far as PW-3 Ashok's injuries are concerned he has said that probable weapon used was firearm. He has further stated that no foreign body was present or palpable. There were no exist wounds. Except the skin surrounding one injury which is an abrasion there was no blackening of skin.

12. So far as injuries of PW-2 Rama are concerned, he has said that no foreign body was palpable, skin was not black and there was no exit wound.

13. So far as injuries on PW-3 Sopan are concerned, he has said that no foreign body was palpable and skin surrounding the injuries was not black.

14. However from injury No.3 received by PW-4 Tukaram Patil, he recovered a pellet. He has opined that all injuries except one are by firearms. But in the cross-examination, he has stated that except as regards

injuries received by PW-4 Tukaram Patil, he cannot state definitely whether injuries received by other witnesses were caused by firearms.

15. It is therefore necessary to see the evidence of recovery of firearms. PW-13 Pandurang Chaudar, the Investigating Officer has stated that the complainant told him that a gun was hidden in the house of one Parshuram Bhopi. Therefore, on 27/3/1983, the house of Parshuram Bhopi was searched. The panchnama in this connection is Ex-62. The case of the prosecution is that this gun was used by accused 2. The question is whether this recovery is genuine and whether that gun can be linked to accused 2 because accused 2 is supposed to have fired at PW-4 Tukaram from whose body a pellet was recovered.

16. PW-13 Pandurang Chaudar has stated that Parshuram Bhopi was arrested in this case but he does not know what happened to him. He does not know whether Parshuram was charge-sheeted or not. But the fact remains that Parshuram is not an accused in this case nor has he been examined as a witness. According to defence, Parshuram Bhopi was the main eye-witness in the criminal case that ended in conviction of some of the prosecution witnesses. Non-examination of this witness shakes the credibility of the prosecution case. It is not understood how the gun allegedly recovered from the house of Parshuram can be linked to accused 2. No witness has stated that it is

the same gun which was used by accused 2. We find this recovery suspicious. Consequently the case that accused 2 fired at prosecution witnesses becomes doubtful.

17. It is also interesting to note that the Chemical Analyser's report, Ex-67 shows that the gun which was allegedly used by accused 1 was not in working condition. No residue of the fired ammunition was detected in the barrel washings of that gun.

18. So far as accused 4 to 14 are concerned, there is absolutely no evidence to indicate their participation in the offence in question. At the trial, the prosecution conceded that there is no evidence against them. Therefore, the possibility of false involvement of the other accused cannot be ruled out particularly because there is enmity between two groups. Moreover since we are dealing with an appeal against acquittal, unless there are compelling reasons to overturn the order of acquittal, merely because some other view of the case is possible, this court cannot interfere with the order of acquittal if the view taken by the trial court is a reasonable and possible view.

19. In such state of evidence assuming motive is established, we are unable to interfere with the order of acquittal so far as the allegations about the injuries caused to PW-2, PW-3, PW-4 and PW-5 are concerned. We, however, feel that so far as injury caused to PW-8

Malubai is concerned, the prosecution has made out its case. PW-8 Malubai has categorically stated that accused 3 Kundalik came running and gave axe blow on her left foot and, therefore, her left foot was cut and then she fell down and became unconscious. So far as this assertion made by PW-8 Malubai is concerned, there is no effective cross-examination which would indicate that she is not telling the truth. She is consistent even in her cross-examination about the injury caused to her. The injury certificate of Malubai is on record. PW-12 Dr. Shivaji Barfe, who had examined Malubai on the same day i.e. 27/3/1983 has described her injury as follows:

"1) Incised wound on left dorsum 7" above left ankle. Transverse in nature. Curved. Tibia was protruded out. Fractured tibia and middle third. Bleeding present 8" x 2" bone.

2) C.L.W. on left tibia anteriorly middle third. Transverse part of tibia protruding out. Bleeding present. 1 1/2 x 1/3 x bone."

20. PW-12 Dr. Shivaji Barfe has stated that the probable weapon in case of injury No.1 is sharp heavy object and in case of injury No.2 is hard and blunt object and probable age of the injury was within 24 hours. He has stated that the injuries are grievous

injuries and the patient had to be transferred to Sion Hospital for further treatment. He has proved the certificate Ex-49. He has further stated that injury No.1 was sufficient to cause death if the treatment was not given in time.

21. PW-8 Malubai is supported by PW-7 Dehu Patil. He has in his evidence categorically stated that when they were at the corner of the house of Shalik Phopheta, accused 3 Kundalik came and gave axe blow on Malubai, who was at the corner of the house of Mangal Namu. In the cross-examination also, he has maintained that Malubai received axe injuries below her knee. On this aspect, he is consistent. In our opinion, the evidence of PW-7 Dehu Patil and PW-8 Malubai establishes, beyond doubt, that accused 3 Kundalik gave axe blow on the foot of Malubai on account of which grievous injury was caused to her. After carefully perusing the entire evidence, we are of the considered opinion that no other conclusion can be drawn on the basis of the facts before us except that it was accused 3 Kundalik who gave axe blow to Malubai. We, therefore, feel that to the extent to which the impugned order and judgment acquits accused 3 Kundalik of the charge of causing grievous hurt to Malubai, it will have to be set aside and accused 3 will have to be convicted for offence under section 325 of the IPC. We have no manner of doubt that accused 3 Kundalik has caused grievous hurt to PW-8 Malubai.

22. Ms. Sawant, the learned counsel appearing for the accused urged that the incident is of 1983 and accused 3 Kundalik is 60 years of age and, therefore, a kindly view may be taken. The learned counsel urged that instead of sentencing him to imprisonment, a fine may be imposed on him.

23. We appreciate this submission. Much time has elapsed from the date of incident. Accused 3 is 60 years old. We, therefore, think it improper at this stage to sentence him to imprisonment. Considering his age and the passage of time, we feel that the sentence undergone by him should be treated as sentence for offence under section 325 of the IPC. However, in addition, he should be directed to pay a fine of Rs.5,000/-. Hence, the following order:

**O R D E R**

(a) Appeal is partially allowed.

(b) The impugned judgment and order of acquittal dated 29/4/1988 passed by the Sessions Judge, Raigad at Alibag in Sessions Case No.121 of 1983 acquitting accused 1, 2 and 4 to 14 is confirmed. So far as order of acquittal of accused 3 Kundalik Dharma Patil is concerned, it is confirmed except so far as the

charge of causing grievous injury to PW-8 Malubai is concerned. He is convicted under section 325 of the IPC for having caused grievous injury to PW-8 Malubai Dharma Patil. For this offence, the sentence already undergone by him shall be treated as sentence imposed by us. For this offence, he shall also pay a fine of Rs.5,000/- (Rupees Five Thousand only) in default of payment of fine of Rs.5,000/-, he shall undergo rigorous imprisonment for four months. Fine be deposited within a period of six weeks from today in the trial court.

(c) Appeal is disposed of in the aforestated terms.

(SMT. RANJANA DESAI, J.)

(A.S. OKA, J.)